

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**BETH WILK**

Claimant

VS.

**TOOMEY, RUSSELL, GREGORY & PILGREEN**

Respondent

AND

**FARM BUREAU MUTUAL INSURANCE COMPANY**

Insurance Carrier

AND

**KANSAS WORKERS COMPENSATION FUND**

Docket No. 190,312

**ORDER**

Claimant appeals from an Award by Administrative Law Judge Nelsonna Potts Barnes dated December 22, 1995. The Appeals Board heard oral argument April 18, 1996

**APPEARANCES**

Claimant appeared by and through her attorney, Alice MacBeth of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Kim R. Martens of Wichita, Kansas. The Workers Compensation Fund appeared by its attorney, Randall C. Henry of Hutchinson, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has adopted the stipulations listed in the Award. The Appeals Board has reviewed and considered the record listed in the Award.

**ISSUES**

The issues raised by the parties for consideration on appeal were:

- (1) Whether claimant should be denied compensation because she failed to use a reasonable and proper guard for protection furnished by the employer.

- (2) Whether claimant met with personal injury by accident arising out of and in the course of her employment with the respondent.
- (3) Nature and extent of claimant's disability.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board finds:

- (1) Claimant did not willfully fail to use a reasonable and proper guard for protection.

Claimant seeks benefits for a cervical injury which she attributes to repetitive work at a computer improperly placed in her workstation. Respondent asserts that if such injury occurred it was due to claimant's willful refusal to follow directions regarding placement and configuration of the computer station. Respondent contends the claim, therefore, is governed by the provisions of K.S.A. 44-501(d)(1) which provides that a claim is to be denied if:

"... the injury to the employee results from ... the employee's willful failure to use ... a reasonable and proper guard and protection voluntarily furnished the employee by the employer ...."

Based upon our review of the record, the Appeals Board finds that while respondent did give some direction about placement of the computer, claimant was also given authority to arrange the station as she wished. Assuming, without deciding, that the deliberate refusal to arrange her workstation as requested would call in to play the above quoted statute, the Appeals Board finds that claimant did not "willfully" refuse to arrange her workstation as suggested. Her claim is, therefore, not barred by the provisions of K.S.A. 44-501(d)(1).

- (2) The Appeals Board finds that claimant did suffer accidental injury arising out of and in the course of her employment.

Dr. Thomas W. Kneidel, claimant's authorized treating physician, opined in his letter of June 13, 1994 as follows:

"Please be advised that it is my professional opinion that the current symptoms that Beth Wilk's experiences are directly related to the work activities that she is reporting." (Kneidel Depo. Exhibit No. 2)

Dr. Lawrence R. Blaty and Dr. Paul S. Stein also related claimant's cervical symptoms to her work for respondent. On the basis of this evidence the Appeals Board finds and concludes claimant did suffer accidental injury arising out of and in the course of her employment with the respondent.

- (3) Claimant suffered a temporary injury only, not permanent disability.

Dr. Thomas Kneidel, the authorized treating physician, determined that claimant suffered a temporary aggravation of a preexisting degenerative disc disease during the week of April 15, 1994. Dr. Lawrence R. Blaty, who examined the claimant at the request of claimant's attorney, concluded there was a permanent injury as a result of claimant's work activities. Dr. Stein, who conducted an independent medical examination at the direction of the Administrative Law Judge, concluded claimant had an exacerbation of a preexisting problem.

In context with the other evidence in this case the Appeals Board finds the opinion expressed by Dr. Kneidel to be the most convincing. Claimant acknowledged symptoms of pain and problems in her neck and shoulders in employment at Abbott Laboratory and flare-ups of her condition in other jobs. Dr. Kneidel had the opportunity to examine claimant and obtain a history of her complaints at a time closer to the date of her alleged injury and over a longer period of time.

The Appeals Board has, in reaching its conclusion, considered the opinions expressed in the January 25, 1995 report from Dr. Paul S. Stein. Claimant contends this report was not considered by the Administrative Law Judge and cites the absence of any reference to it in the Award. The Appeals Board finds it unnecessary to determine, at this point, whether the report was considered by the Administrative Law Judge as the Appeals Board has conducted a de novo review which does consider this report. The report is not considered persuasive evidence of a permanent injury. It refers to an exacerbation of a preexisting problem without indicating whether the exacerbation was temporary or permanent. Dr. Stein's deposition was not taken.

For the above foregoing reasons the Appeals Board has concluded that claimant's injury was a temporary exacerbation of a preexisting degenerative condition. It resulted in no additional permanent impairment. The Appeals Board, therefore, affirms the decision by the Administrative Law Judge.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated December 22, 1995, should be, and the same is hereby, affirmed.

### **AN AWARD OF COMPENSATION IS HEREBY DENIED IN ACCORDANCE WITH THE ABOVE FINDINGS.**

The fees necessary to defray the expense of administration of the Workers Compensation Act are hereby assessed against the respondent to be paid directly as follows:

Deposition Services	
Deposition of Beth Wilk	\$436.20
Deposition of Thomas Kneidel, M.D.	\$203.80
Deposition of Terry Pilgreen	\$235.00
Deposition of Mel Gregory	\$261.20
<b>Total</b>	<b>\$1,136.20</b>
Ireland Court Reporting	
Transcript of Regular Hearing	\$516.15
Deposition of Jerry Hardin	\$316.60
Deposition of Lawrence Blaty, M.D.	\$477.80
<b>Total</b>	<b>\$1,310.55</b>
Barber & Associates	
Transcript of Preliminary Hearing	\$120.20

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Alice MacBeth, Wichita, KS  
Kim R. Martens, Wichita, KS  
Randall C. Henry, Hutchinson, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director